

Port of Houston Authority
MISCONDUCT REPORTING POLICY
JUNE, 2014



A. Objectives. The Port of Houston Authority is committed to lawful and ethical behavior in all of its activities and requires Port Commissioners and employees to act in accordance with all applicable laws, regulations and policies and observe high standards of ethics in the conduct of their duties and responsibilities.

The objectives of this Port of Houston Authority Misconduct Reporting Policy (the "Whistleblower Policy"), are to establish policies, procedures, and protections for Whistleblowers, in order to:

1. Prevent or detect and correct improper activities.
2. Encourage each Port Commissioner and employee to report what he or she in good faith believes to be a violation of law or policy or a questionable accounting or auditing matter by the Port Authority.
3. Ensure the receipt, documentation, retention of records, and resolution of reports received under this Whistleblower Policy.
4. Protect Whistleblowers from retaliatory action.

B. Definitions. For the purposes of this Whistleblower Policy, capitalized terms used herein shall have the following meanings:

1. "Audit Committee" means the Audit Committee of the Port Commission.
2. "Complaint" means a complaint under the Whistleblower Act.
3. "Executive Director" means the senior-most staff executive of the Port Authority.
4. "General Counsel" means the senior-most staff attorney of the Port Authority.
5. "Investigator" means the General Counsel, Managing Director of Internal Audit, or other person, as appointed by the Chairman of the Audit Committee, or other members of the Audit Committee, as applicable, to undertake investigation of a report of Misconduct.
6. "Investigator's Report" means the written report prepared by the Investigator upon conclusion of his or her investigation of alleged Misconduct or a Complaint.

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7. “Misconduct” means a violation of law or Port Authority policy, by a Port Commissioner, employee, or third-party acting in connection with the Port Authority, except for (i) violations that are subject to the Port Authority’s employee grievance procedures, such as harassment, and (ii) routine workplace grievances.

For the purposes of the Whistleblower Policy, “Misconduct” also includes (i) the failure to take an action in order for the Port Authority to be in compliance with law or policy or with generally accepted accounting practices, (ii) retaliation towards anyone who reports Misconduct, and (iii) a violation subject to the Port Authority’s employee grievance procedures, following the conclusion of a grievance procedure with respect to such violation.

Misconduct that should be reported includes, for purposes of illustration and without being limited to, the following:

- a. Providing false or misleading information on the Port Authority’s public documents.
 - b. Providing false or misleading information on the Port Authority’s financial documents.
 - c. Providing false information to or withholding material information from the Port Commission or the Port Authority’s auditors, accountants, attorneys or other representatives responsible for ensuring the Port Authority’s compliance with legal and financial responsibilities.
 - d. Embezzlement, private benefit, or misappropriation of Port Authority funds.
 - e. Violation of Port Authority policy, including among others, the Port Authority’s Ethics Policy and this Whistleblower Policy.
 - f. Discrimination based on race, religion, gender, age, national origin, disability, or other impermissible grounds.
 - g. Assisting or concealing any of the above or similar actions.
8. “Port Authority” means the Port of Houston Authority.
9. “Port Commission” means the Port Commission of the Port of Houston Authority.

10. “Reporting Service” means the Port Authority’s third-party reporting services provider hereunder.

11. “Substantial Evidence” means evidence sufficient for a reasonable person to conclude that Misconduct has occurred.

12. “Whistleblower” means the Port Commissioner or employee reporting misconduct under this Whistleblower Policy.

13. “Whistleblower Act” means Chapter 554 of the Texas Government Code, attached as Exhibit A.

C. Reporting and Investigation of Misconduct.

1. Responsibility to Report. A Port Commissioner or Port Authority employee who believes in good faith that Misconduct has occurred or is occurring should report the facts or circumstances giving rise to this belief as provided in this Whistleblower Policy.

a. A report of Misconduct should be submitted to the Reporting Service using one of the options set forth in Exhibit B.

b. A report of Misconduct should be made to the Reporting Service as promptly as possible, but no later than thirty (30) days after the Whistleblower becomes aware of facts or circumstances that appear to constitute Misconduct.

c. The Managing Director of Internal Audit shall provide the Audit Committee with a verbal or written report following each quarter summarizing all Reporting Service activity during the previous quarter.

d. If any facts or circumstances contained in a Whistleblower’s report of Misconduct are later determined to be false or misleading, the Whistleblower shall be deemed to have committed no wrong and breached no rule under this Whistleblower Policy, provided that the report was made in good faith. However, a Whistleblower who makes allegations that prove to be unsubstantiated, and that prove to have been made maliciously, recklessly, with gross negligence, or with the knowledge that the allegations are false, violates this Whistleblower Policy and commits Misconduct.

2. Initial Duties following Report of Misconduct to Reporting Service.

a. Upon receiving a report of Misconduct, the Reporting Service shall promptly deliver such report to the Managing Director of Internal Audit, with a copy to the General Counsel.

b. In the event a report of Misconduct alleges that any person who may participate in the investigation or decision-making process provided by this Whistleblower Policy was a participant in or was aware of the Misconduct, such person shall recuse himself or herself from the procedures set out herein.

3. Anonymity.

a. The Reporting Service shall not provide the identity of the Whistleblower when reporting Misconduct.

b. Notwithstanding the foregoing, if the Whistleblower voluntarily discloses his or her identity to any Port Commissioner or employee of the Port Authority during or after the filing of a report of Misconduct, the Port Authority has no responsibility to limit further dissemination or disclosure of the Whistleblower's identity, in connection with the investigation of the Whistleblower's report.

4. Determination of Further Action.

a. Upon receiving any report of Misconduct, the Managing Director of Internal Audit and General Counsel shall promptly consider what action should be taken in response to the report of Misconduct, provided that in the event either of them recuses himself or herself, the Executive Director shall appoint a replacement to carry out the duties of that person under the procedures set out herein.

b. Following such consideration, the Managing Director of Internal Audit and General Counsel shall notify the Audit Committee regarding the report, provide a summary of the relevant facts and circumstances contained in the report, and set forth their recommended characterization of the report.

c. The Managing Director of Internal Audit and General Counsel may either recommend that:

i. The report does not describe Misconduct, or a violation subject to the Port Authority's employee grievance procedures, or a routine workplace grievance;

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ii. The report does not describe Misconduct, but instead describes a violation subject to the Port Authority's employee grievance procedures, or a routine workplace grievance; or

ii. The report describes Misconduct.

d. If the Audit Committee determines that:

i. The report does not describe Misconduct, or a violation subject to the Port Authority's employee grievance procedures, or a routine workplace grievance, then no further action shall be taken.

ii. The report does not describe Misconduct, but instead describes a violation subject to the Port Authority's employee grievance procedures, or a routine workplace grievance, then the Managing Director of Internal Audit and General Counsel shall report it to the Director of Human Resources.

iii. The report describes Misconduct, then the Audit Committee shall thereupon appoint the Investigator.

e. The Managing Director of Internal Audit and General Counsel shall inform the Executive Director of any such determination, and provide a summary of the relevant facts and circumstances contained in the report.

5. Conduct of Investigation. The Investigator shall promptly investigate the report of Misconduct, to determine whether the report is supported by Substantial Evidence. Substantial Evidence need not be admissible in a court of law.

a. The Investigator may authorize (i) the Managing Director of Internal Audit, or his or her designee and (ii) the General Counsel, or his or her designee to participate in the investigation as well as any relevant witnesses. Provided doing so serves the objectives of this Whistleblower Policy, the Investigator may authorize the General Counsel to inform any other Port Authority employee, including the Whistleblower, regarding the pendency of the investigation.

b. Members of the Audit Committee and, unless otherwise instructed by the Audit Committee, the General Counsel or his or her designee may: (i) attend and participate in all interviews and meetings between the Investigator and any Port Commissioner or employee of the Port Authority, and (ii) request and receive regular updates and reports concerning the progress of the investigation and the information obtained by the Investigator. The Executive Director may request and receive regular

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updates and reports concerning the progress of the investigation and the information obtained by the Investigator.

c. Port Authority employees and Port Commissioners shall cooperate fully with any investigation hereunder and provide truthful information, written statements, documents, and related materials upon the request of any Investigator. Any Port Commissioner or employee who fails to cooperate fully with any investigation hereunder violates this Whistleblower Policy and commits Misconduct.

d. Unless authorized by an Investigator, or as otherwise provided by law, no Port Commissioner or employee may disclose to any person other than an Investigator the substance of any communication (whether verbal, electronic, or in writing) to or from any Investigator relating to the investigation.

6. Interference by Employees or Port Commissioners.

a. Except as provided in Section C(5)(a) or (b) above, no Port Commissioner or Port Authority employee may request and/or obtain verbal or written statements or reports pertaining to the subject matter of any Misconduct investigation from any person alleged to be involved with the investigation as a Whistleblower, respondent, or witness, until such investigation is disposed of as provided herein.

b. No Port Commissioner or employee shall interfere with any investigation of alleged Misconduct.

c. No Port Commissioner or employee shall retaliate or take any adverse employment action against any person as a result of cooperation with any investigation of alleged Misconduct.

7. Disposition of Criminal Matters.

a. Upon the Investigator's conclusion that Substantial Evidence supports an allegation of Misconduct that would violate state or federal criminal law, the Investigator shall discontinue his or her investigation and deliver a copy of the report of such Misconduct, together with any related documents, to the Chairman of the Audit Committee, with copies to the Executive Director, the General Counsel, and the Managing Director of Internal Audit.

b. If the Chairman of the Audit Committee, Executive Director, General Counsel, or the Managing Director of Internal Audit does not concur with the Investigator's assessment, the non-concurring party shall immediately notify the others. Unless such notice is received within twenty four (24) hours of any such referral, the

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General Counsel shall thereupon deliver such materials provided by the Investigator, in an envelope or other sealed container prominently marked “Privileged and Confidential Attorney-Client Communication – Attorney Work Product,” to the appropriate criminal law authorities.

c. Notwithstanding the foregoing procedures, if the Chairman of the Audit Committee, Executive Director, General Counsel, or the Managing Director of Internal Audit concludes that a report alleging criminal Misconduct is of such a nature that immediate referral is warranted, such person may refer such matter to criminal law authorities prior to a determination of whether Substantial Evidence supports it. If any such party refers the matter to criminal law authorities, within twenty-four (24) hours thereafter, such party shall notify the others listed above of such referral.

8. Investigator’s Report on Allegations of Non-Criminal Misconduct. If the Investigator determines that substantial evidence supports an allegation of Misconduct but that the Misconduct does not violate a state or federal criminal law (or that the violation is of such a *de minimis* nature that it is not reasonably likely to lead to criminal prosecution), the Investigator shall inform the Chairman of the Audit Committee, with copies to the Executive Director, the General Counsel, and the Managing Director of Internal Audit. The Investigator may prepare a verbal or written report on the allegation of Misconduct.

a. If a written report is prepared, each page of the Investigator’s Report shall be marked “Privileged and Confidential Attorney-Client Communication” and “Attorney Work Product,” as applicable.

b. The Investigator shall deliver the Investigator’s Report to the Audit Committee, the Executive Director, the General Counsel, and the Managing Director of Internal Audit.

9. Disposition of Non-Criminal Matters.

a. Upon receipt of the Investigator’s Report, further action, whether disciplinary, remedial, or otherwise, regarding Misconduct by an employee of the Port Authority shall be taken at the sole discretion and direction of the Executive Director.

b. If the Investigator’s Report contains evidence of Misconduct by the Executive Director or any person who is not an employee of the Port Authority, all further action shall be taken at the sole discretion of the Port Commission.

c. The Executive Director or the Port Commission, as applicable, shall send notice of the disposition of a report of Misconduct, describing the nature of any

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actions taken in response to the Investigator's Report, to the Audit Committee, the Executive Director, the General Counsel, and the Managing Director of Internal Audit, as applicable. Provided doing so serves the objectives of this Whistleblower Policy, the Executive Director, the General Counsel, or the Managing Director of Internal Audit may inform any other Port Employee regarding the disposition of the report.

10. Conflict with Laws. This Whistleblower Policy does not relieve any Port Commissioner or employee of any duty to comply with state and federal laws, administrative procedures, or other applicable governmental regulations regarding the reporting of legal misconduct.

11. Penalties for Violation. Violation of this Whistleblower Policy may subject a Port Authority employee to disciplinary action up to and including termination of employment.

D. Whistleblower Retaliation Complaints.

1. Filing a Whistleblower Retaliation Complaint. An employee or former employee who believes that the Port Authority has taken an adverse personnel action against him or her because of reporting Misconduct under this Whistleblower Policy may file a Complaint with the Reporting Service in accordance with the procedures outlined in Exhibit B, stating the facts or circumstances giving rise to the employee's belief.

2. Timing of Complaint. A Complaint should be filed with the Reporting Service as promptly as possible. Immediately upon receipt of the Complaint from the Reporting Service, the Managing Director of Internal Audit shall mark the date and time of receipt on the face of the Complaint.

3. Anonymity. The procedures governing the anonymity of the Port Commissioner or employee filing the Complaint shall be identical to those described in Section C(3) above.

4. Determination of Further Action. The procedures governing the determination of whether further action shall be taken in response to a Complaint are identical to those described in Section C(4) above.

5. Investigation. The procedures governing investigation of Complaints shall be identical to those described in Sections C(5) and C(6), above.

6. Referral of Criminal Matters. Although retaliation claims generally do not constitute criminal conduct, the Investigator may, in the course of his investigation, find substantial evidence of criminal misconduct. In that event, the procedures for referring

criminal matters discovered during the investigation shall be identical to those described in Section C(7) above.

7. Disposition of Retaliation Complaints.

a. Upon receipt of the Investigator's Report, further action regarding an employee of the Port Authority, whether disciplinary, remedial, or otherwise, shall be taken at the sole discretion and direction of the Executive Director.

b. If the Investigator's Report contains evidence that the Executive Director, or any person who is not an employee of the Port Authority, violated the Whistleblower Act, or committed any other Misconduct, all further action shall be taken at the sole discretion of the Port Commission.

c. The Executive Director or Port Commission, as applicable, may provide any remedy provided for in the Whistleblower Act to an employee whose employment is suspended or terminated or who has been subject to an adverse personnel action in violation of the Whistleblower Act.

d. The Executive Director or the Port Commission, as applicable, shall send notice of the disposition of a Complaint, describing the nature of the actions, if any, taken in response to the Investigator's Report, to the Audit Committee, the General Counsel, and the Managing Director of Internal Audit, as applicable.

8. Penalties for Violation. Violation of the Whistleblower Act shall subject a Port Authority employee to disciplinary action up to and including termination of employment.

Exhibit "A"

Whistleblower Act

TEXAS GOVERNMENT CODE
TITLE 5. OPEN GOVERNMENT; ETHICS
SUBTITLE A. OPEN GOVERNMENT
CHAPTER 554. PROTECTION FOR REPORTING VIOLATIONS OF LAW

Sec. 554.001. DEFINITIONS. In this chapter:

- (1) "Law" means:
 - (A) a state or federal statute;
 - (B) an ordinance of a local governmental entity; or
 - (C) a rule adopted under a statute or ordinance.
- (2) "Local governmental entity" means a political subdivision of the state, including a:
 - (A) county;
 - (B) municipality;
 - (C) public school district; or
 - (D) special-purpose district or authority.
- (3) "Personnel action" means an action that affects a public employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.
- (4) "Public employee" means an employee or appointed officer other than an independent contractor who is paid to perform services for a state or local governmental entity.
- (5) "State governmental entity" means:
 - (A) a board, commission, department, office, or other agency in the executive branch of state government, created under the constitution or a statute of the state, including an institution of higher education, as defined by Section 61.003, Education Code;
 - (B) the legislature or a legislative agency; or
 - (C) the Texas Supreme Court, the Texas Court of Criminal Appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

Sec. 554.002. RETALIATION PROHIBITED FOR REPORTING VIOLATION OF LAW. (a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.

(b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

- (1) regulate under or enforce the law alleged to be violated in the report; or
- (2) investigate or prosecute a violation of criminal law.

Sec. 554.003. RELIEF AVAILABLE TO PUBLIC EMPLOYEE. (a) A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Section 554.002 is entitled to sue for:

- (1) injunctive relief;
- (2) actual damages;
- (3) court costs; and
- (4) reasonable attorney fees.

(b) In addition to relief under Subsection (a), a public employee whose employment is suspended or terminated in violation of this chapter is entitled to:

- (1) reinstatement to the employee's former position or an equivalent position;
- (2) compensation for wages lost during the period of suspension or termination; and
- (3) reinstatement of fringe benefits and seniority rights lost because of the suspension

or termination.

(c) In a suit under this chapter against an employing state or local governmental entity, a public employee may not recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount that exceeds:

(1) \$50,000, if the employing state or local governmental entity has fewer than 101 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(2) \$100,000, if the employing state or local governmental entity has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(3) \$200,000, if the employing state or local governmental entity has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year; and

(4) \$250,000, if the employing state or local governmental entity has more than 500 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year.

(d) If more than one subdivision of Subsection (c) applies to an employing state or local governmental entity, the amount of monetary damages that may be recovered from the entity in a suit brought under this chapter is governed by the applicable provision that provides the highest damage award.

Sec. 554.0035. WAIVER OF IMMUNITY. A public employee who alleges a violation of this chapter may sue the employing state or local governmental entity for the relief provided by this chapter. Sovereign immunity is waived and abolished to the extent of liability for the relief allowed under this chapter for a violation of this chapter.

Sec. 554.004. BURDEN OF PROOF; PRESUMPTION; AFFIRMATIVE DEFENSE. (a) A public employee who sues under this chapter has the burden of proof, except that if the suspension or termination of, or adverse personnel action against, a public employee occurs not later than the 90th day after the date on which the employee reports a violation of law, the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.

(b) It is an affirmative defense to a suit under this chapter that the employing state or local governmental entity would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under this chapter of a violation of law.

Sec. 554.005. LIMITATION PERIOD. Except as provided by Section 554.006, a public employee who seeks relief under this chapter must sue not later than the 90th day after the date on which the alleged violation of this chapter:

(1) occurred; or

(2) was discovered by the employee through reasonable diligence.

Sec. 554.006. USE OF GRIEVANCE OR APPEAL PROCEDURES. (a) A public employee must initiate action under the grievance or appeal procedures of the employing state or local governmental entity relating to suspension or termination of employment or adverse personnel action before suing under this chapter.

(b) The employee must invoke the applicable grievance or appeal procedures not later than the 90th day after the date on which the alleged violation of this chapter:

(1) occurred; or

(2) was discovered by the employee through reasonable diligence.

(c) Time used by the employee in acting under the grievance or appeal procedures is excluded, except as provided by Subsection (d), from the period established by Section 554.005.

(d) If a final decision is not rendered before the 61st day after the date procedures are initiated under Subsection (a), the employee may elect to:

(1) exhaust the applicable procedures under Subsection (a), in which event the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under this chapter; or

(2) terminate procedures under Subsection (a), in which event the employee must sue within the time remaining under Section 554.005 to obtain relief under this chapter.

Sec. 554.007. WHERE SUIT BROUGHT. (a) A public employee of a state governmental entity may sue under this chapter in a district court of the county in which the cause of action arises or in a district court of Travis County.

(b) A public employee of a local governmental entity may sue under this chapter in a district court of the county in which the cause of action arises or in a district court of any county in the same geographic area that has established with the county in which the cause of action arises a council of governments or other regional commission under Chapter 391, Local Government Code.

Sec. 554.008. CIVIL PENALTY. (a) A supervisor who in violation of this chapter suspends or terminates the employment of a public employee or takes an adverse personnel action against the employee is liable for a civil penalty not to exceed \$15,000.

(b) The attorney general or appropriate prosecuting attorney may sue to collect a civil penalty under this section.

(c) A civil penalty collected under this section shall be deposited in the state treasury.

(d) A civil penalty assessed under this section shall be paid by the supervisor and may not be paid by the employing governmental entity.

(e) The personal liability of a supervisor or other individual under this chapter is limited to the civil penalty that may be assessed under this section.

Sec. 554.009. NOTICE TO EMPLOYEES. (a) A state or local governmental entity shall inform its employees of their rights under this chapter by posting a sign in a prominent location in the workplace.

(b) The attorney general shall prescribe the design and content of the sign required by this section.

Sec. 554.010. AUDIT OF STATE GOVERNMENTAL ENTITY AFTER SUIT. (a) At the conclusion of a suit that is brought under this chapter against a state governmental entity subject to audit under Section 321.013 and in which the entity is required to pay \$10,000 or more under the terms of a settlement agreement or final judgment, the attorney general shall provide to the state auditor's office a brief memorandum describing the facts and disposition of the suit.

(b) Not later than the 90th day after the date on which the state auditor's office receives the memorandum required by Subsection (a), the auditor may audit or investigate the state governmental entity to determine any changes necessary to correct the problems that gave rise to the whistleblower suit and shall recommend such changes to the Legislative Audit Committee, the Legislative Budget Board, and the governing board or chief executive officer of the entity involved. In conducting the audit or investigation, the auditor shall have access to all records pertaining to the suit.

Exhibit “B”

Reporting Options

Report online: *www.tnwinc.com/portofhoustonauthority*

Toll-free telephone : 800-555-5555 (24 hours a day, 7 days a week)